

154 FERC ¶ 61,236  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Algonquin Gas Transmission, LLC

Docket Nos. CP14-96-000  
CP14-96-001

ORDER ON RECONSIDERATION AND STAY

(Issued March 25, 2016)

1. On March 3, 2015, the Commission issued a certificate to Algonquin Gas Transmission, LLC (Algonquin) to construct and maintain its Algonquin Incremental Market Project (AIM Project).<sup>1</sup> In response, the Commission received eight timely rehearing requests and two requests for stay of the certificate order. On January 28, 2016, the Commission denied the rehearing requests and requests for stay.<sup>2</sup>
2. On March 3, 2016, the New York State Department of Environmental Conservation (New York DEC) requested that the Commission reconsider and stay its prior determination to grant a certificate to Algonquin for its AIM Project.<sup>3</sup>
3. The New York DEC states that at the direction of the New York State Governor, Andrew Cuomo, it and the New York Department of Homeland Security and Energy Services, New York State Department of Health, and New York Department of Public Service are conducting an independent safety risk analysis of the AIM Project near

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<sup>1</sup> *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 (2015) (Certificate Order).

<sup>2</sup> *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048 (2016) (Rehearing Order).

<sup>3</sup> The New York Department of Homeland Security and Energy Services, New York State Department of Health, and New York Department of Public Service, who are not parties to this proceeding, were also signatories to the March 3, 2016 Letter.

Indian Point Nuclear Facility (Indian Point) owned and operated by Entergy Nuclear Operations Inc. in the Village of Buchanan, New York. As indicated in the January 28, 2016 order, approximately 2,159 feet of the AIM Project pipeline will run through Indian Point's property at a location over 1,600 feet from the power plant structures and 2,370 feet from the protective security barrier around the main facility sites.<sup>4</sup>

4. The New York DEC indicates it and the other state agencies are specifically looking into several recent issues at the Indian Point facility and whether operational problems at the facility were the cause of a February 6, 2016 tritium leak. New York DEC states they are also investigating any impacts unexpected shutdowns of the facility during 2015 may have had on operations of the units and whether the owner of the facility is appropriately investing capital expenditures and operation and maintenance budgets to ensure reliable and adequate operations. The New York DEC asks the Commission stay its certification of the AIM project until it and the other state agencies have completed their analysis and reconsider whether the proximity of the proposed AIM Project facilities to Indian Point and the construction methods required to install the pipeline would have an impact on the leaking of tritium into groundwater or otherwise increase the potential for operational problems at Indian Point.

5. As discussed below, we deny the New York DEC's request for reconsideration and for stay.

## **Discussion**

### **A. Request for Reconsideration**

6. As described in our January 28, 2016 order, the U.S. Nuclear Regulatory Commission (NRC) reviewed Entergy's evaluation of safety considerations related to the construction of a portion of the AIM Project in the vicinity of the Indian Point facility which determined that the pipeline as proposed and incorporating certain safety mitigation measures would not pose increased risks to the Indian Point facility or reduce the margin of safety. The NRC also performed its own independent confirmatory analysis and similarly concluded that the AIM Project would not adversely impact the safe operation of Indian Point.<sup>5</sup> Based on these analyses, the Commission found that the AIM Project will not result in increased safety impacts at the Indian Point facility.

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<sup>4</sup> *Id.* at P 197.

<sup>5</sup> *Id.* at P 198.

7. The Commission considers pipeline safety as an important and serious matter. The New York DEC indicates that its and the other state agencies' "investigations may reveal newly discovered information" related to risks posed by siting the AIM Project in the vicinity of the Indian Point facility which, in turn, "may warrant reopening the [Commission's] record" in this proceeding.<sup>6</sup> All of the incidents described in the New York DEC's pleading, including the tritium leak, occurred within the facility's security barrier, at least 2,370 feet from the pipeline. The horizontal directional drill to install the pipeline under the Hudson River is over twice the distance from the Indian Point security barrier. The NRC's analysis, which concluded that the AIM Project posed no increased risk, presumed catastrophic pipeline failure.<sup>7</sup> There is nothing in the New York DEC's current pleading that calls our findings regarding the safety of constructing a portion of the AIM Project in the vicinity of the Indian Point facility into question. Therefore, we find no basis for granting the requested reconsideration.

### **B. Request for Stay**

8. The Commission's standard for granting a stay is whether justice so requires.<sup>8</sup> The most important element is a showing that the movant will be irreparably injured without a stay. To ensure definiteness and finality in our proceedings, our general policy is to refrain from granting a stay.<sup>9</sup> If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.<sup>10</sup>

9. New York DEC has not shown that absent a stay there will be irreparable injury to public safety. The Commission determined in the Certificate Order that the AIM Project poses no increased risks to the Indian Point facility.<sup>11</sup> Further, we also rejected the

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<sup>6</sup> Request for Reconsideration at page 3.

<sup>7</sup> Rehearing Order, 154 FERC ¶ 61,048 at P 205.

<sup>8</sup> Administrative Procedure Act, 5 U.S.C. § 705 (2012); *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,254, at P 8 (2008). Under this standard, the Commission generally considers whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay will substantially harm other parties, and whether a stay is in the public interest. *Pub. Util. Dist. No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at P 6 (2005).

<sup>9</sup> *See, e.g., Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

<sup>10</sup> *See, e.g., Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022, at P 14 (2012).

<sup>11</sup> Certificate Order, 150 FERC ¶ 61,163 at P 106.

rehearing arguments that the Commission did not adequately support its conclusion that the AIM Project would not increase safety impacts at Indian Point.<sup>12</sup> Consequently, we deny New York DEC's request to stay the certificate order.

The Commission orders:

- (A) New York DEC's request for reconsideration is denied.
- (B) New York DEC's' request for stay is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>12</sup> Rehearing Order, 154 FERC ¶ 61,048 at PP 197-206.